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SUBJECT: NEW LAWS FURTHER POLITICIZE VENEZUELAN JUDICIARY

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Classified By: A/POLITICAL COUNSELOR DANIEL LAWTON,
FOR REASON 1.4(D)

¶1. (C) Summary: The National Assembly (AN) passed two new judicial laws in April that will further diminish what independence remains within Venezuela's court system and make it easier for the executive and legislative branches to discipline or remove magistrates. Pundits assess that this is an effort to give the GBRV even more tools to control the judiciary and to give the Government of the Bolivarian Republic of Venezuela (GBRV) direct influence over individual judges. While the GBRV claims to be reforming and democratizing Venezuela's court system, in reality, it is subjugating the already politicizing judiciary even further.
End Summary.

JUDICIAL LAW DEEPENS GBRV REACH

¶2. (SBU) The National Assembly (AN) approved in second discussion April 2 the Justice System Law, which is intended to "regulate the organization, coordination, and functioning of the justice system." Article 9 of the proposed text will create a National Commission of the Justice System to regulate the administration of justice, comprised of two AN Deputies and three magistrates (both internally elected), two Cabinet ministers (including Minister of the Interior Tarek El Aissami), the Attorney General, the Human Rights Ombudsman, the public prosecutor, and the national public defender. The President of the Supreme Court (TSJ), Luisa Estella Morales, will represent the 32-member TSJ. The law would provide that grassroots community councils select the magistrates who would go on to compete for judicial slots.

¶3. (C) Constitutional legal expert Jose Vicente Haro told Poloff April 30 that reconstituting the commission to oversee the judiciary is nothing new in Venezuela, which he says has never had a tradition of judicial independence. Since the 1970's, he claimed, each time a new government came into power, the institution that oversees the judiciary would be overhauled and/or renamed in order to appoint magistrates friendly to the incoming government and its political goals. Haro contended that the new National Commission is simply an effort to clean house and involve the GBRV more directly in the judiciary to exercise more control over their decision-making. He added that 700 judges are rumored to be on an already-circulating list of future planned firings, comprising approximately 20 percent of the total judges in Venezuela.

14. (C) The AN also approved April 2 the Judge's Code of Ethics to legislate a new disciplinary process for magistrates. Haro said that an ethical code has been a long time coming, but was sidelined after the AN and TSJ sparred over the code's content. He claims that the AN first proposed a code that would subject TSJ judges to the code, but the TSJ protested that they should not be governed by the same code as lower-level "magistrates." The new legislation will create a Disciplinary Tribunal to investigate wrongdoing or misbehavior by judges, as well as the appellate Disciplinary Court. Both courts' members will be selected by community councils, and the TSJ has no authority to review punitive sanctions taken against magistrates.

15. (SBU) Article 35 of the draft law permits that even a judge who has resigned can be investigated or have charges brought against him or her before the tribunal. If the resignation is found to have been "malicious" -- presumably with intent to evade justice -- then the magistrate in question can be disqualified from serving in any judicial capacity for two up to 15 years. Simply failing to appear before the tribunal when summoned can result in a "provisional separation" from employment, without severance pay. The tribunal's decisions will be entered into a Judicial Disciplinary Information Registry (Siridi), a database which will include the curriculum, evaluations, and other information about each and every magistrate and court official. All potential personnel decisions will have to first consult with Siridi.

CRITICS SAY LAWS "DANGEROUS"

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16. (SBU) AN Deputy Pastora Medina, from the pro-government dissident Popular Humanist Front (FPH), criticized March 22 the new justice law as unconstitutional. Article 267 of the Constitution stipulates that "the TSJ is charged with the direction, government, and administration of the judiciary, and the inspection and vigilance of the courts of the Republic and of the public defenders." Medina argued that the new law creates a parallel judicial structure that permits other branches of the central government to directly influence and control the judicial process. She added that it was "extremely dangerous" that the judicial system would be required to have "popular consultations" regarding its administration, hindering its ability to operate independently and without bias. Opposition Primero Justicia (PJ) leader Julio Borges published an op-ed article April 14 contending that "the worst tragedy in Venezuela is impunity...and the government's response has been to increasingly control the judicial system and completely politicize the administration of justice."

17. (C) Comment: The purpose of these new judicial laws does not appear to be aimed at genuine judicial reform but rather to enhance President Chavez's and his supporters' control over Venezuela's court system. These laws give the GBRV new tools to oversee and remove judges, and a significant purge of the small percentage of independent judges may be in the offing. Although the GBRV is trumpeting the Venezuela's community councils' new role in judicial oversight as a "democratic" measure, the reality is that the executive branch exercises tight control over almost all community councils. The presence of key Chavez allies like Minister of the Interior Tarek El Aissami and AN Deputies not only deepens the court's politicization, but also subjugates it not just to the GBRV but to the AN as well. End Comment.

CAULFIELD